# APPENDIX

## Opinion of the Court of Appeals of the State of New York

The People of the State of New York, Appellant v. Carlos Overton, Respondent.

Argued June 1, 1967; decided July 7, 1967

KEATING, J. Three detectives of the Mount Vernon Police Department having obtained a search warrant went to the Mount Vernon High School. The warrant directed a search of the persons of two students and, also, of their lockers.

The detectives presented the warrant to the vice-principal, Dr. Panitz, who sent for the two students, one of whom was the defendant, Carlos Overton. The detectives searched them and found nothing. A subsequent search of Overton's locker, however, revealed four marijuana cigarettes.

The defendant moved to invalidate that portion of the search warrant which directed a search of his locker, on the ground that the papers were defective upon which it was based. This motion was granted. The court denied the motion to suppress, however, on the grounds that the vice-principal had consented to the search and that he had a right to do so. The Appellate Term reversed and dismissed the information, holding that the consent of the vice-principal could not justify an otherwise illegal search. The People have appealed from this order of the Appellate Term.

It is axiomatic that the protection of the Fourth Amendment is not restricted to dwellings (*Go-Bart Co.* v. *United*

*States,* 282 U. S. 344). A depository such as a locker or even a desk is safeguarded from unreasonable searches for evidence of a crime (*United States* v. *Blok,* 188 F. 2d 1019).

There are situations, however, where someone other than the defendant in possession of a depository may consent to what otherwise would have been an illegal search. Such a case was *United States* v. *Botsch* (364 F. 2d 542 [2d Cir., 1966], cert. den. 386 U. S. 937). In that case, the defendant had rented a shed from one Stein. Stein retained a key to the shed and accepted deliveries on behalf of the defendant. When the police approached Stein and informed him of their suspicion that the defendant was receiving goods obtained through fraud, Stein consented to a search of the shed.

In upholding the search, the court noted two significant factors. First, Stein had a key to the shed and, second, more than a mere landlord-tenant relationship existed, since Stein was empowered to take deliveries on behalf of the defendant. The court also noted that Stein had a right to exculpate himself from implication in the defendant's scheme.

Considering all these factors cumulatively, the court concluded that, in this situation, Stein could give consent to the search. Thus, the search was not unreasonable in contravention of the Fourth Amendment.

The relationship between school authorities and students is likewise a distinctive one. The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they may continue de-

veloping both intellectually and socially, have a right to expect certain safeguards.

It is in the high school years particularly that parents are justifiably concerned that their children not become accustomed to antisocial behavior, such as the use of illegal drugs. The susceptibility to suggestion of students of high school age increases the danger.

Thus, it is the affirmative obligation of the school authorities to investigate any charge that a student is using or possessing narcotics and to take appropriate steps, if the charge is substantiated.

When Overton was assigned his locker, he, like all the other students at Mount Vernon High School, gave the combination to his home room teacher who, in turn, returned it to an office where it was kept on file. The students at Mount Vernon are well aware that the school authorities possess the combinations of their lockers.

It appears understood that the lock and the combination are provided in order that each student may have exclusive possession of the locker vis-à-vis other students, but the student does not have such exclusivity over the locker as against the school authorities. In fact, the school issues regulations regarding what may and may not be kept in the lockers and presumably can spot check to insure compliance. The vice-principal testified that he had, on occasion, inspected the lockers of students.

Indeed, it is doubtful if a school would be properly discharging its duty of supervision over the students, if it failed to retain control over the lockers. Not only have the school authorities a right to inspect but this right becomes a duty when suspicion arises that something of an illegal nature may be secreted there. When Dr. Panitz learned of the detectives' suspicion, he was obligated to inspect the

locker. This interest, together with the nonexclusive nature of the locker, empowered him to consent to the search by the officers.

Accordingly, the order of the Appellate Term should be reversed and the matter remitted to that court for consideration of the other points raised by the defendant which were not decided on the prior appeal.

BERGAN, J. (dissenting). The District Attorney concedes the search warrant was bad, i.e., "We acknowledge, to take as many issues out of the case as possible, that the search warrant was properly vacated". Defendant had paid for personal use of the locker and, as far as he was concerned, the People also admit, a search of the locker by police without a warrant "would be invalid".

No doubt the principal of the school had a supervisory power to inspect the locker. But if an invalid warrant was used to compel him to exercise this power, and if it adversely affected the constitutional right of the defendant to be secure against unlawful search and seizure, this invalid compulsion under a bad search warrant was as much an invasion of defendant's rights as if the police, under the purported authority of the warrant, had broken the door of the locker or compelled the defendant himself to open it.

There can be no doubt, reading this record, that the principal opened the door, not because he was exercising a free supervisory control over the locker in the interest of the school program, but because he felt the invalid search warrant compelled him to do so. He affirmatively answered the question that in opening the door he was "honoring the search warrant".

Nor does *United States* v. *Botsch* (364 F. 2d 542) support the People in this case. There, the owner of a rented shed, having a key and requested by the tenant to deposit certain

deliveries of goods in the shed, became concerned about his own involvement in a crime, and invited postal inspectors, without a warrant, to come into the premises. This has no relevance to the effect of compulsion exerted by an invalid warrant on the rights of a person affected by such compulsion.

The order should be affirmed.

Judges VAN VOORHIS, BURKE, SCILEPPI and BREITEL concur with Judge KEATING; Judge BERGAN dissents and votes to affirm in an opinion in which Chief Judge FULD concurs.

Order of Appellate Term reversed and matter remitted to that court for further proceedings in accordance with the opinion herein.

## Opinion of the Appellate Term

Cal. No. 74, The People of The State of New York, Respondent v. Carlos Overton, Appellant (W). 2469

Judgment and order denying motion to suppress evidence reversed on the law, motion granted and information dismissed.

The warrant, in so far as it directed a search of defendant's locker in a public high school was vacated by the trial court. The search was illegal and cannot be justified upon the theory of consent on the part of the vice-principal of said school. Defendant had the exclusive use of the locker in question and the purported consent to search it was not binding upon him. The confession obtained from defendant, being the product of the illegal search and seizure, was inadmissible against him (*People* v. *Rodriguez,* 11 N. Y. 2d 279, 286). Absent any competent evidence upon which the conviction can be upheld, we are constrained to dismiss the information.

McDonald and Groat, JJ., concur.

Fanelli, J., not voting.

**Decision of Hon. John P. Griffith Denying Motion to Suppress**

COURT OF SPECIAL SESSIONS,

MOUNT VERNON, NEW YORK

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PEOPLE OF THE STATE OF NEW YORK

*against*

CARLOS OVETTON,

Defendant.

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On the 21st of December, 1964 the detectives of the Mount Vernon Police Department secured a warrant from this Court in connection with an investigation of the defendant, Carlos Overton, and another. The warrant itself directed a search of the persons of the two individuals and of the automobiles respectively driven by each of them, and also "on the grounds of the Mount Vernon High School * * * and or, in lockers 154 and 2684 of the Mount Vernon High School used by Carlos Overton and another."

The affidavit on which the warrant was based does not state any facts concerning the search of the school grounds or of the respective lockers of the boys who are under investigation.

Subsequent to the issuance of the warrant, the three detectives presented themselves at the office of Dr. Panitz, Vice-Principal of the high school. Dr. Panitz and the Principal Dr. Spalding were at an officers' meeting with

the Superintendant of Schools, but returned to their office shortly afterwards. They pointed out Carlos Overton and the other youth who were taken to the office of Dr. Panitz. While in Dr. Panitz's office, both youths were searched and nothing in the way of contraband was found. Detective Pappas then said to Mr. Overton, "If we searched your locker, we would find the narcotics there." Mr. Overton, it was testified, nodded his head in the affirmative.

The attorney for the defendant moves to invalidate that portion of the search warrant which directed a search of the grounds of the high school and the lockers. This motion was granted.

The next question is as to whether or not the search can be sustained on other grounds. The Court finds that the Vice-Principal of the Mount Vernon High School retained dominion over all the lockers which were assigned to individual students in that institution. This fact was made known to the boys, and Dr. Panitz testified that on many occasions he had opened lockers without the boys' knowledge.

The Court has examined the doctrine of consent and finds that there has been no New York cases that have been brought to the attention of the Court. However, in the case of *Morris* v. *Comm. Ky.*, 208 S. W. 2d 58, wherein it is held that a father may consent to a search of his home for implements used by his son in the commission of a crime, and similarly, Henry B. Rothblatt in his recent book has the following observation, New York Law Journal, January 21, 1965:

> "Only a person who could have resisted the search as an invasion of his personal rights, or somebody specifically authorized by him to consent to the search, may offer such consent."

The defendant's attorney has cited many cases concerning hotel rooms and furnished rooms and other quasi residential quarters, but these can be distinguishable from the case herein because in the cases cited by the attorney for the defense the room could be opened for the purpose of cleaning the same for making the beds, refurbishing the bathroom accoutrements, but not to search the luggage or the bureaus in which the patron's possessions might be stored. However, in the instant case The Board of Education, through Dr. Panitz, retained dominion over the use of the lockers and the Court finds that the search was legal.

For all of the above reasons, the motion to suppress is denied.

The question as to the sufficiency of the information will be taken up at a later date inasmuch as the same is premature on this hearing.

Dated: March 19, 1965.

JOHN P. GRIFFITH,
City Judge of Mount Vernon.